IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1612 of 1993

with

SPECIAL CIVIL APPLICATION No 9148 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRIRAM BEARINGS LTD

Versus

SHANTILAL B PARIKH

Appearance:

1. Special Civil Application No. 1612 of 1993
   MR HASMUKH THAKKAR FOR MR PS CHARI for Petitioner No. 1
   MR YV SHAH for Respondent No. 1
2. Special Civil Application No. 9148 of 1993
   MR YV SHAH for Petitioner No. 1
   RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/08/2003

COMMON ORAL JUDGEMENT

#. Heard learned advocate Mr.Hasmukh Thakkar for learned advocate Mr.P.S.Chari on behalf of the petitioner Company and learned advocate Mr.Y.V.Shah for respondent workman in connection with SCA No.1612 / 1993 and vis-a-vis in another cross petition.

#. In both these petitions, the employer and the employee have challenged the very award passed by the Labour Court, Ahmedabad in Reference LCA No.695 / 1978 dated 20th June, 1992. The labour court has partly allowed the Reference with direction to the employer to pay Rs.67,000/- being compensation to the respondent workman instead of reinstatement for the period from 25th July, 1978 to 31st May, 1992 with further direction to the employer to comply with the award within 30 days from the date of publication of the award and also awarded the cost of Rs.500/- against the employer to be paid to the employee.

#. The employer being aggrieved of this award filed this petition with prayer to quash and set aside the award, whereas, the workman being aggrieved of the amount of the compensation so awarded by the labour court, has preferred cross petition for enhancement of the amount of compensation. Learned advocate Mr.Shah has submitted that today the respondent workman has crossed the age of about 70 years.

#. Considering the fact that both these petitions arose out of the common award between the very parties, both these petitions are being disposed of by this common judgment.

The Division Bench of this Court, while issuing Rule in Special Civil Application No.1612 / 1993 passed the order on date 11.3.1993 with interim direction to the employer to deposit a sum of Rs.25,000/- before this Court and on the other hand, permitted the respondent workman to withdraw the said amount on filing an undertaking. The order passed by the Division Bench of this Court on date 11.3.1993, is very relevant for being referred and therefore, the same is reproduced as under:

"Rule. Heard the learned advocates appearing for the parties as regard interim relief. The learned counsel for the petitioner states that as per the direction given by the Labour Court, the

petitioner is required to make payment of an amount of Rs.67,000/- [Rupees Sixty Seven Thousand only]. This statement is not disputed by the learned counsel appearing for the respondent. In our opinion, if the petitioner is directed to make payment of an amount of Rs.25,000/- [Rupees Twenty Five Thousand only] at this stage and if the petitioner is permitted to retain the balance of the amount during the pendency of the petition, that would meet the ends of justice as far as the interim relief is concerned. For the aforesaid reasons, it is ordered that the direction given by the Labour Court as regards payment of backwages and the amount of compensation is concerned, the implementation of the same is stayed on condition that the petitioner deposits an amount of Rs.25,000/- [Rupees Twenty Five Thousand only] in this court on or before April 17, 1993. As and when the amount is deposited in this Court, the same shall be permitted to be withdrawn by the respondent workman. The respondent workman shall file an undertaking in this court that in case he loses in the petition and is required to restore the entire amount or any amount as may be determined by this Court, he shall restore the same to the petitioner within the time as may be directed by this Court. Only after the undertaking is filed, the amount shall be permitted to be withdrawn by the office. A copy of the undertaking shall be served upon the learned counsel for the petitioner. The balance of the amount may be retained by the petitioner on condition that in case the petitioner loses in the petition and is required to make payment of the balance of the amount or any other amount as may be determined by this Court, the same shall be paid to the respondent workman by the petitioner with 15 % [Fifteen percent] interest which will be calculated from the date of the award i.e. June 29, 1992. If the amount as indicated hereinabove is not deposited by the petitioner, the interim relief granted herein shall stand vacated.

Dt.11.3.94 [A.P.Ravani,J.] [J.M.Panchal,J.]"

#. Learned advocate Mr.Thakkar for the employer has submitted that the petitioner has deposited a sum of Rs.25,000/- before this Court and learned advocate

Mr.Y.V.Shah submits that the workman has withdrawn this amount from the Registry of this Court. Considering submissions of the learned advocates for the parties, this Court has verified the record and even from the record, it is ascertained that the petitioner employer has deposited the said amount and the same has been withdrawn by the respondent workman.

#. It is also noted that the workman concerned has also filed petition subsequent to the filing of the petition by the employer, wherein, this Court has issued Rule on 15th July, 1994. The brief facts of the petition filed by the workman are as under :

According to the workman, he was employed by the employer on 23rd September, 1968 and he remained on leave for a period from 6th February, 1978 to 4th March, 1978 and on that basis, ultimately, suspension order came to be passed by the employer on 21st February, 1978 and after holding departmental inquiry, ultimately, the respondent workman was dismissed from service by the employer on date 25th May, 1978. However, the dispute between the parties is that leave was not sanctioned by the management and no prior permission has been obtained by the respondent workman and workman was working as Senior Accountant having post of confidence which resulted into chargesheet and thereby, departmental inquiry and dismissal. The workman has raised industrial dispute aganinst dismissal which ultimately referred by the Assistant Commissioner of Labour, Ahmedabad on 18th July, 1978.

Before the labour court, the workman had filed statement of claim and the employer also filed written statement and certain documents were also produced by both the parties and the workman was examined before the labour court and two witnesses examined by the employer and after completion of the oral and documentary evidence, the labour court has examined the merits of the matter. One important fact which requires to be noted that before the labour court, the workman has not challenged the legality and validity of the departmental inquiry and ultimately, relying on that Purshis, the labour court has come to the conclusion that department inquiry held to be legal and valid. Even finding was not challenged and disputed by the respondent workman. Thereafter, the labour court has examined the question of punishment while exercising the powers under Section 11-A of the I.D.Act. The labour court has come to the conclusion that upto inquiry report, there was no

challenge by the respondent workman but in between, from the inquiry report to the dismissal, second show cause notice was not given to the respondent workman and that is how the labour court has come to the conclusion that dismissal order is required to be set aside. This being only ground, on which, reliance has been emphasized by the labour court for setting aside dismissal order.

#. In the background of above factual aspects, the learned advocate Mr.Thakkar for the employer has submitted that once departmental inquiry held to be legal and valid and no challenged to the finding of the inquiry report, then the labour court is not having any power or jurisdiction to interfere with the punishment order. The second contention raised by the learned advocate Mr.Thakkar is that the respondent workman who was dismissed in the year 1978, he obtained Sanad in the year 1979 and started practice in the year 1981 and the workman was having two telephone connections, one is at residence and another in his office, though, wife of the workman was not working and therefore, this was the clear evidence led before the labour court. Therefore, learned advocate Mr.Thakkar submitted that once gainful employment is proved and the workman having become a Practicing Advocate, certain presumption must be drawn about his gainful employment and therefore, the labour court has committed gross error in granting lumpsum compensation of Rs.67,000/- in favour of the workman and it is the basic error committed by the labour court. He also submitted that the labour court has committed error in considering the period from 1981 - 1992 because that period wherein the respondent workman was having established practice, for that, no payment is necessary and therefore, the labour court has committed gross error. He relied on the decision in support of his submission that second show cause notice which is not given by the employer - petitioner is not fatal to the case of the petitioner, meaning thereby, punishment of dismissal ought not have been set aside. Therefore, he relied on decision in case of ASSOCIATED CEMENT CO.LTD V. T.C.SRIVASTAVA & ORS. reported in 1984 [2] LLJ pg.105. Relying on the aforesaid decision, he submitted that the Apex Court has come to the conclusion that while interpreting the Industrial Employment Standing Orders, Standing Order providing for opportunity to be given to workers to offer explanation before imposing punishment of dismissal, does such standing orders imply second opportunity being given before inflicting punishment after conclusion of enquiry ?, whether enquiry is vitiated by failure to give second opportunity. Learned advocate Mr.Thakkar submitted that the answer given by

the Apex Court in negative and therefore, contended that since no opportunity was given to the workman, dismissal ought not to have been set aside. Except this decision, learned advocate Mr.Thakkar has not cited any other decision or authority before this Court. In short, his submission is the labour court has committed gross error in granting lumpsum amount without application of mind and also to set aside dismissal because of want of second show cause notice and therefore, the award in question is required to be set aside. Save and except the contentions referred above, no other submission made by the learned advocate Mr.Thakkar while defending the case of the petitioner employer before this Court.

#. Learned advocate Mr.Y.V.Shah for the respondent workman has submitted that at present the workman is aged about 70 years and the labour court has committed gross error not granting higher amount of compensation because the workman had worked for more than ten years with the employer and in past, there was no any bad incident in his service career, meaning thereby, the respondent workman was having clean service record. Therefore, he submitted that some more amount of compensation ought to have been awarded in favour of the respondent workman. He also submitted that the respondent workman was not working on the post possessing confidence as at the relevant time, he was working on the post of Sub Accountant not as Senior Accountant. Except that, learned advocate Mr.Y.V.Shah has not made any further submissions before this Court, nor cited and relied upon any decision while pleading the case of the respondent workman before this Court.

#. I have considered submissions made by the learned advocates for the respective parties. This Court has also gone through the decision of the Apex Court in case of ASSOCIATED CEMENT CO. LTD. cited before this Court referred to above. The question put up for consideration before this Court by the learned advocate Mr.Thakkar that whether chargesheet which has been served to the respondent workman by the employer under any provisions of the Standing Orders Act or not; whether departmental inquiry was held under any provisions of Standing Order Act or not, the answer is "No", meaning thereby, departmental inquiry which has been conducted and chargesheet which has been served to the respondent workman without following any provisions of the Standing Orders Act and Standing Order Act is not applicable to the petitioner - employer and chargesheet and departmental inquiry is not held in accordance with

standing orders of the petitioner employer. In the decision of ASSOCIATED CEMENT CO. LTD. Vs. T.C. SRIVASTAVA & ORS, the Apex Court has made the following observations while keeping in mind the Standing Orders and that cannot be considered to be general observations which apply to the facts of any other cases. The following observations are very important to make distinction about the observations made by the Apex Court as under :-

"It is well known that after the enunciation of these principles model standing orders have been framed to provide for the detailed steps required to be undertaken during a domestic inquiry. Since the instant Standing Order was certified prior to the formulation of the above principles it merely contains a bald provision for giving the accused an opportunity to offer any explanation. In other words, different stages in domestic inquiry were never in the contemplation of the framers of the Standing Order. That being the position it would be difficult to attribute any intention to the framers thereof to provide for a second opportunity being given to the delinquent of showing cause against the proposed punishment."

The observations made by the Apex Court in para-8 of the aforesaid decision are relevant and the same are reproduced as under :-

"8. At the outset the legal position as has been clarified At the outset the legal position as has been clarified by this Court in the Saharanpur Light Railway Co.'s case (supra) may be stated. In the context of certain modification sought to be introduced in a Standing order requiring a second show cause notice this Court has observed thus: '

"As regards the modification requiring a second show cause notice, neither the ordinary law of the land nor the industrial law requires an employer to give such a notice. In none of the decisions given by the Courts or the Tribunals , such a second show cause notice in the case of removal has ever been demand or considered necessary. The only class of cases where such a notice has been held to be necessary are those arising under Art. 311. Even that has now been removed by the recent amendment of that Article.

To import such a requirement from Art. 311 in industrial matters does not appear to be either necessary or proper and. would be equating industrial employees with civil servants. In our view, there is no justification or any principle for such equation. Besides, such a requirement would unnecessarily prolong disciplinary enquiries which in the interest of industrial peace should be disposed of in short time as possible. In our view it is not possible to consider this modification as justifiable either on the ground of reasonableness of fairness and should therefore be set aside."

It is thus clear neither under the ordinary law of the land nor under industrial law a second opportunity to show cause against the proposed punishment is necessary. This, of course, does not mean that a Standing order may not provide for it but unless the Standing order provides for it. either expressly or by necessary implication no inquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity. The question is whether para 3 of the Standing order No. 17 provides for such second opportunity being given to the delinquent ? The relevant words are " all dismissal order shall be passed by the Manager alter giving the accused an opportunity to offer any explanation". The underlined words are wholly inappropriate to convey the idea of a second hearing on opportunity on the question of punishment but appropriate in the context of seeking an explanation in regard to the alleged misconduct charged against him. An explanation' is to be called from the 'accused' which suggests that the same is to be called for prior to the recording of finding that the delinquent is guilty of misconduct: it is the alleged misconduct that is to be explained by him and not the proposed punishment. On a plain reading of the relevant words no second opportunity of showing cause against the proposed punishment is contemplated either expressly or by necessary implication. In other words, it is clear to us that the opportunity spoken of by para 3 OE S.O. 17 is the opportunity to be given to the delinquent to meet the charge framed against him. In this connection it will be pertinent to mention that the concerned S.O. was framed and came into force on March 1, 1946 and was duly certified on

> October 16, 1954 under the Industrial employment (Standing orders) Act, 1946 i.e. prior to the enunciation of the law by Courts regarding the observance of the principles of natural justice such as issuance of a charge-sheet, holding of an inquiry, opportunity to lead evidence, etc. and it is well-known that after the enunciation of these principles model standing orders have been framed to provide for the detailed steps required to be undertaken during a domestic inquiry. Since the Instant Standing order was certified prior to the formulation of the above principles it merely contains a bald provision for `giving the accused an opportunity to offer any explanation'. In other words, different stages in domestic inquiry were never in the contemplation of the framers of the S.O. That being the position it would be difficult to attribute any intention to the framers thereof to provide for a second opportunity being given to the delinquent of showing cause against the proposed punishment. The latter part of para 3 merely casts a unilateral obligation on concerned authority or the officer to give due consideration to the gravity of the misconduct and the previous record of the delinquent in awarding the maximum punishment."

##. Therefore, while keeping in mind the said observations made by the Apex Court in case of ASSOCIATED CEMENT CO.LTD referring to above, the view taken by the Division Bench of this Court in case of GUJARAT STATE ROAD TRANSPORT CORPORATION VS. CHANDULAL G. RASADIYA reported in 1993 [1] GLR 442, wherein the question was examined by the Division Bench of this Court that when the discipline and appeal procedure is not required to be followed in case of Badali Workers, then principles of natural justice are requires to be followed if dismissal amounts to stigmatizing their career. Therefore, the Division Bench has examined the question that what are the necessary steps being an opportunity available to the workman in case when any chargesheet is served to the employee. The Division Bench of this Court has considered various decisions of the Apex Court and come to the conclusion that to satisfy requirement of observance of principle of natural justice in departmental inquiry which impliedly covers a show cause notice for the proposed punishment. Relying upon the decision of the Apex Court in case of U.P.WAREHOUSING CORPORATION VS. VIJAY NARAYAN reported in AIR 1980 SC 840, the relevant observations made by the Division Bench

of this Court in para-13 are quoted as under :

"13. Mr.Rathod, learned advocate for the respondent, for this purpose rightly relied upon the decision of the Supreme Court in the case of S.E. & Stamping Works Ltd. V. Workmen, AIR 1963 SC 1914. In that case the Court was required to consider a situation where there were no rules framed before termination of the employees' services and the employees' services were terminated by the Company for causing wilful insubordination or disobedience whether alone or in combination with another or others, of many orders of the superior or of the management. The enquiring authority arrived at the conclusion that workmen were unable to explain as to why these persons [other person who were examined by the management] would be making the reports against them falsely. Thereafter the services of the employees were terminated. In that context it was observed that it has been laid down by the Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the Industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. Thereafter the Court pertinently observed that some employers have misunderstood the decisions of the Court to mean that the mere form of an enquiry would satisfy the requirements of Industrial Law and the Court held as under :

"An enquiry cannot be said to have been properly held unless, [i] the employee proceeded against has been informed clearly of the charges levelled against him, [ii] the witnesses are examined ordinarily in the presence of the employee in respect of the charges; [iii] the employee is given a fair opportunity to cross examine witnesses, [iv] he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and [v] the enquiry officers records his findings with reasons for the same in his report."

Same principle has been reiterated in the case of Meenglas Tea Estate v. The Workmen, AIR 1963 SC 1719, wherein it is held as under :

> "It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. he must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character this requirement must be substantially fulfilled before the result of the enquiry can be accepted."

In the case of U.P.Warehousing Corpn. V. Vijay Narayan, AIR 1980 SC 840, also the Court has held as under :

> "The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish him innocence which means and includes an opportunity to cross examine the witnesses relied upon by the appellant -Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment."

##. In light of above observations made by the Division Bench of this Court relying upon the Apex Court, if this Court now consider the case on hands in similar line keeping in mind the principle of natural justice, ultimately, it is common sense justice, nothing else. The employer served the chargesheet to the workman and after completion of departmental inquiry, employer came to the conclusion to accept the report of the inquiry officer, wherein chargesheet has been found to have been proved against the workman. On that basis, while accepting the report of the inquiry officer, if the employer wants to pass any order which is adverse to the workman, then it is the duty of the employer to atleast call for an explanation from the workman that whether the

workman intended to say something about proportion of punishment and if the workman might not have said something as to proposed punishment, then opportunity impliedly covered for observing the principle of natural justice. This is also basic requirement because while accepting the report from the inquiry officer, the workman was not aware about the fact that the employer has accepted the report or not, whether the report is against the workman or not. Therefore, not to provide copy of the report and not to call for an explanation about the proposed punishment, that itself, is contrary to the principle of natural justice. It is not the case of the employer that second show cause notice was served to the respondent workman meaning thereby, it is undisputed fact before the labour court that second cause notice was not given. The intention or the object to serve the second show cause notice is to see that the workman must be informed as to result of the inquiry and whether that result of the inquiry has been accepted by the employer or not and if it is accepted by the employer then, what is the next further step of the employer. These are the basic requirement of the principles of natural justice and in absence of non compliance, naturally, that would vitiate the order of punishment. Therefore, the decision of the Apex Court which is relied upon by the learned advocate Mr.Thakkar in case of ASSOCIATED CEMENT CO. LTD. referred to above, does not applicable to the facts of the present case, as there is no similar Standing Order applicable to the petitioner Company.

##. Recently, concept of the principle of natural justice has been examined by the Apex Court in case of Canara Bank. However, At this juncture, it is also pertinent to refer the recent decision of the Apex Court on the issue of principle of natural justice in case of CANARA BANK AND OTHERS VS. DEBASIS DAS AND OTHERS reported in 2003 SCC [L& S] 507. The important observations made by the Apex Court in aforesaid decision says as under :

> "Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with

a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

It is further observed that;

"Notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the party determinately of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed aginst him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time.

##. In view of above observations made by the Apex Court, if any orders which required to be passed by the employer against the workman having adverse civil consequences, then, before passing such orders, reasonable opportunity of hearing must have been given to the workman concerned, as per observations made by the Apex Court, if any orders which required to be passed by the employer against the workman having adverse civil consequences, then, before passing such orders, reasonable opportunity of hearing must have been given to the workman, as per observations made by the Apex Court. If any orders which required to be passed by the employer against the workman, the whole concept has been made clear by the Apex Court after considering various decisions of the Apex Court.

##. In respect of the contention raised by the learned advocate Mr.Thakkar that once the departmental inquiry held to be legal and valid and finding has not been

challenged by the workman, then the labour court does not have any jurisdiction to alter the punishment or to interfere with the punishment order passed by the employer while exercising the powers under Section 11-A of the I.D.Act, 1947.

##. However, this very contention has been examined by the Apex Court in case of SCOOTER INDIA LTD . VS. LABOUR COURT, LUCKNOW, reported in AIR 1989 SC 149, wherein the Apex Court has considered that if the departmental inquiry is fair and lawful, finding is not vitiated, even though the labour court is having powers to interfere with the punishment order and there is nothing wrong, if interference is made by the labour court while exercising the powers under Section 11-A of the I.D.Act, 1947. The Apex Court has considered that justice must be tempered with mercy and the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner company." The relevant observations and discussion made by the Apex Court in para-7 is the clear answer to the contention raised by the learned Advocate Mr.Thakkar to the effect that the labour court can interfere with the punishment while keeping in mind the reformative steps while exercising the powers under Section 11-A of the I.D.Act. The relevant observations made by the Apex Court in para-7 in case of Scooter India Ltd., AIR 1989 SC 149 are referred as under :

"7. The High Court has considered at length the nature of the powers conferred on the Labour Court by Section 6[2A] of the Act for setting aside an order of discharge or with an order of lesser punishment and as such it cannot be said that the High Court has failed to consider the facts in their entirety. As regards the third contention, we may only state that the Labour Court was not unaware of the nature of the charges framed against the respondent or the findings rendered by the Inquiry Officer and the acceptance of those findings by the Disciplinary Authority. The labour court has observed as follows :-

"The workman has unfortunately to blame himself for much of the bad blood which has developed between him and the management and therefore misconduct, motivated by ideals which are not relevant has been far from satisfactory. In so far as it was rough, bordering on

rudeness and with highly exaggerated sense on his duties. In these circumstances it will meet the ends of justice if back wages to the extent of 75 % are allowed to the workman. I would make my award accordingly but there shall be no order as to costs."

It cannot therefore be said that the Labour Court had exercised its powers under Section 6[2A] of the Act in an arbitrary manner and not in a judicial manner. The Labour Court has taken the view that justice must be tempered with mercy and that the erring workman should be given an opportunity to reform himself and prove to be a loyal and disciplined employee of the petitioner company. It cannot therefore be said that merely because the labour Court had found the enquiry to be fair and lawful and the findings not to be vitiated in any manner, it ought not to have interfered with the order of termination of service passed against the respondent in exercise of its powers under Section 6[2A] of the Act."

##. In view of above observations made by the Apex Court, the contention raised by the learned advocate Mr.Thakkar cannot be accepted and similarly, contention raised by the Leonard advocate Mr.Shah also worth not acceptance because the labour court has rightly considered the matter and accepted the finding given by the inquiry officer and set aside dismissal order only on the ground that prior show cause notice was not given and therefore, according to my opinion, the labour court has set aside the dismissal order on the ground that reasonable opportunity of show cause notice before passing of the adverse order of punishment is not given and therefore, for that the labour court has not committed any error and the same does not require any interference by this Court.

##. Lastly learned advocate Mr.Thakkar has also submitted that the amount of compensation which has been arrived at by the labour court is on much higher side because the workman has become Practising Advocate having obtained Sanad in the year 1979 and started practice in the year of 1981 and therefore, he would not have been awarded any amount for the period from 1981 to 1992. But it requires to be appreciated that the labour court has not granted any fully backwages but only granted 50 % backwages for the period from 1981-92 and for the prior period from 28th May, 1978 to 31st December, 1980 the

labour court has granted full wages of the interim period while keeping in mind his monthly salary at Rs.720/-. Therefore, the contention raised by the learned advocate Mr.Thakkar cannot be accepted simply on the ground that the compensation amount is required to be arrived at by the labour court while exercising the powers under Section 11-A of the I.D.Act considering the relevant factors viz. first the backwages part and secondly the number of years to be served by the workman in future and third, the availability of alternative employment, forth is the age of the workman, and the capacity of the employer to pay and the nature of employer's business and lastly the gainful employment of the workman. Thus, all these factors require to be considered by the labour court while considering the amount of backwages, as has been rightly discussed by the labour court in its award. Therefore, according to my opinion, the labour court has rightly come to the conclusion and the amount of lumpsum amount of compensation to the tune of Rs.67,000/inasmuch as the workman had completed 10 years service prior to dismissal and there was no serious allegation against the workman about his past record, meaning thereby, the workman must have clean record and also considering the fact that there was no charge of dishonesty and misappropriation against the workman but the sole charge against the workman to remain absent for a period of one month without prior permission. However, the charge levelled against the workman certainly can be said to be misconduct but it was not such misconduct, so serious in nature which could result into damage of prestige of the company or any property to the company. It is also clear from the award because the workman remained absence for a period of more than one month and as such, no damage has been caused to the company or its property and prestige and therefore, the labour court has considered all these facts and circumstances in its entirety as well relevant six factors relying on the judgment of the Patna High Court reported in 1983 Lab.I.C. 1955 and therefore also, according to my opinion, even the contention raised by the learned advocate Mr.Thakkar that the amount of compensation is on higher side, cannot be accepted.

##. The Labour Court has exercised the powers under Section 11-A of the I.D.Act, 1947. This Section gives power to the Labour Court to set aside punishment order if Labour Court is satisfied that punishment is unjust and not proper. Similarly, considering the misconduct of remaining absent for a period of one month, the punishment of dismissal itself is harsh and unjustified. Though there was genuine reason for the workman to remain absent being compelling circumstances, is also required

to be taken in account while imposing the punishment by the Competent Authority which was not taken in account by the petitioner while passing punishment order. This aspect has been examined by the Apex Court as well as Gujarat High Court in following cases, where the punishment of dismissal for misconduct of remaining absent, has set aside. The following are the citations of the each case.

[i] Union of India and others v. Giriraj Sharma, AIR 1994 SC 215

[ii] Syed Zaheer Hussain and others V. Union Of India and others, 1999 SCC Lab & Service 666

[iii] Vijaykumar Muljibhai Jasani v. Gujarat State Road Trasport Corporations, Rajkot, 1987 Lab.I.C. 685

[iv] Sardarsinh Devisinh v. The District Superintendent of Police, Sabarkantha District and others, 1985 [26] GLR 1368

[v] Gujarat State Road Trasport Corporation vs. Rama Samat Godhania, 2000 [2] GLH 231

[vi] State of Rajasthan & others v. Sujata Malhotra, 2002 II CLR 16 SC

[vii] Harishankar Mishra v. Commissioner, Jhansi Division, 2002 Lab.I.C. 1526

##. I have considered the above referred cases. In my opinion, the punishment of dismissal in case of misconduct of remaining absent without prior permission is harsh and unjustified. Therefore, in such case, the labour court is having power to grant appropriate relief in favour of the workman looking to the facts of each case. The decision of ASSOCIATED CEMENT COMPANY PVT. LTD. as relied upon by the learned advocate Mr.Thakkar is not applicable to the facts of the present case. However, particular provision of the Standing Order was interpreted, is not the facts in the present case. On the contrary, it was the case of the petitioner that there is no standing order applicable to the petitioner company and no such specific Rule followed by the company in issuing chargesheet and holding departmental inquiry against the respondent workman. In absence of particular service Rules, the principle of natural justice must be followed strictly. The provision of Article 311 of the

Constitution of India is not applicable to the present case. Therefore, not to issue second show cause notice before passing punishment order itself amounts to violation of principle of natural justice. The meaning of reasonable opportunity in departmental inquiry, requires to be complied with upto the stage of punishment, meaning thereby, even after the completion of departmental inquiry, what is the report of the Inquiry Officer and whether that report is accepted by the Competent Authority or not, and if accepted, then same shall have to be communicated to the workman concerned with second show cause notice informing the workman the proposed punishment and calling for an explanation from the workman against the finding of the Inquiry Officer and proposed punishment. Thus, this can be interpreted and said to be "Reasonable Opportunity" and such opportunity must be given to the workman concerned. But in the facts of the case on hands, admittedly, such opportunity was not given to the workman and therefore also, the labour court has rightly set aside the punishment order of dismissal as it is against the principle of natural justice and as a result thereof, the punishment of dismissal can be said to be harsh and disproportionate to the misconduct. Therefore, in my opinion, the labour court has applied its mind in granting compensation to the workman believing the allegations of the petitioner of loss of confidence against the workman. For that, the labour court has not committed any error.

##. Therefore, the view taken by the labour court is correct and the amount of compensation awarded by the labour court is just, proper and reasonable and hence, there is no need for enhancement of said amount of lumpsum compensation awarded by the labour court as contended by the learned advocate Mr.Shah.

However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not. Therefore, this Court having limited jurisdiction under Article 227 of the Constitution and even if two views are possible, this Court cannot interfere with the finding of the labour

court unless there is an error apparent on the face of the record.

##. Therefore, according to my opinion, the labour court has not committed any procedural irregularity while passing the award in question and the finding is not baseless and perverse and considering the award and limited jurisdiction of this Court, according to my opinion, the labour court has rightly passed the award which is legal and valid and as such, no error committed by the labour court and the same does not warrant for interference of this Court while exercising the powers under Article 227 of the Constitution of India and therefore, both these petition require to be dismissed.

In view of above discussion, both these petitions fail and the same are dismissed accordingly. Rule in both these petitions, stand discharged with no order as to costs.

Interim relief, if any, stands vacated.

##. Therefore, in the result, it is directed to the petitioner employer to pay the balance amount of Rs.42,000/- shall be paid to the respondent workman Shantilal Babaldas Parikh with 15 % interest from the date of award i.e. 20th June, 1992 till the date of actual payment made to the respondent workman as per the condition imposed by the Division Bench of this Court while granting interim stay in favour of the petitioner employer by order dated 11th March, 1993. It is further directed to the petitioner employer to make payment of this amount with interest at the rate of 15 % interest from the date of award till the actual date of payment within one month from the date of receiving the copy of this order.

Date : 4.8.2003 [H.K.Rathod, J.]

#kailash#